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Paper 28

Filed: February 9, 2009

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Merck Patent Gmbh, Junior Party (Application 10/239,566,

Inventors: Friedrich Rippmann and Klaus Ducker).

v.

Lexicon Genetics Inc., Senior Party (Patent 7,229,790

Inventors: Carl Johan Friddle and Brenda Gerhardt, and Yi Hu).

Patent Interference 105,594 (RES) Technolgy Center 1600

Before: RICHARD E. SCHAFER, JAMESON LEE, and MICHAEL P. TIERNEY, Administrative Patent Judges.

SCHAFER, Administrative Patent Judge

Judgment - Request for Adverse - Bd.R. 127(b)

- 1 Merck has filed a notice of abandonment of the contest (Paper 27).
- 2 An abandonment of the contest is construed as a request for adverse
- 3 judgment. 37 CFR § 41.127(b)(4). Accordingly, it is

ORDERED that judgment on priority as to the subject matter of 1 Count 1 (Paper 1, p. 4) is awarded against Merck; 2 FURTHER ORDERED that Claims 1-9 and 11 of Merck 3 Application 10/239,566 (corresponding to Count 1) are finally refused (35 4 5 U.S.C. § 135(a)); 6 FURTHER ORDERED that a copy of this judgment be made of record in the files of Application 10/239,566, and Patent 7,229,790; and 7 FURTHER ORDERED that if there is any settlement agreement or 8 related documents which have not been filed, attention is directed to 9 10 35 U.S.C. § 135(c) and 37 CFR § 41.205.

/ Richard E. Schafer/	_)
RICHARD E. SCHAFER)
Administrative Patent Judge)
)
)
/ Jameson Lee /) BOARD OF PATENT
JAMESON LEE) APPEALS AND
Administrative Patent Judge) INTERFERENCES
)
)
/Michael P. Tierney/)
MICHAEL P. TIERNEY)
Administrative Patent Judge)

cc (electronic filing):

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